

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LLOYD T. SCHUENKE,

Petitioner,

Case No. 11-C-045

-vs-

**JUDY SMITH,¹
Warden of Oshkosh Correctional
Institution,**

Respondent.

DECISION AND ORDER

On November 16, 2010, the pro se Petitioner Lloyd T. Schuenke (“Schuenke”), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the Western District of Wisconsin. On January 13, 2011, United States District Judge Barbara B. Crabb entered an order directing the Clerk of Court for the Western District of Wisconsin to transfer the action to this District because under 28 U.S.C. § 2241(d), it is the proper venue for this action.

Following the transfer of the action to this District, it was randomly assigned to this Court. The Court noted that Schuenke’s petition was not signed under the penalty of

¹This Court has amended the caption to substitute Judy Smith (“Smith”), the Warden of Oshkosh Correctional Institution as the Respondent in lieu of Michael Thurmer, who formerly was the Warden of Waupun Correctional Institution, because the Petitioner is currently in the custody of Smith. See Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts; Fed. R. Civ. P. 25(d). Smith is hereby substituted as the Respondent.

perjury and it does not substantially follow either the form appended to the Rules Governing Section 2254 Cases in the United States District Courts or a form prescribed by the local district court rules. Other problems with Schuenke's petition are that he has not confined his challenge to his current conviction that is the cause of his "in custody" status. Instead, Schuenke's original petition includes challenges to sentences that he has fully served. Schuenke's petition does not disclose whether he challenged the constitutionality of his 1991 conviction and sentence for the two counts of third-degree sexual assault.

On February 16, 2011, citing Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts and Civil Local Rule 9 (E.D. Wis.), requiring all persons seeking release from custody under 28 U.S.C. §§ 2241, 2254, and § 2255 to use forms this District's forms, this Court directed Schuenke to file his petition on this District's § 2254 form no later than March 18, 2011. A copy of the District's form was enclosed with that Decision and Order. Schuenke was also warned that failure to comply with the Order by the stated deadline would result in the dismissal of his action.

Schuenke then filed various motions including motions for a waiver of Civil Local Rule 9 and for additional time to file his petition. On August 23, 2011, this Court issued a Decision and Order granting in part Schuenke's motions for a waiver of Civil Local Rule 9 and for an extension of time to file his petition, setting an October 11, 2011, deadline for him to file his petition on a proper form.

Schuenke has failed to comply with two Court orders directing him to comply with Civil Local Rule 9, by filing his petition on form required by this District. General Local Rule 83(f) explicitly provides that the Court may impose appropriate sanctions for failure to comply with a Local Rule. Schuenke was directed to refile his petition on the proper form more than six months ago. He was also given additional time to comply with the Court's order. However, at this juncture, based on Schuenke's persistent failure to comply with Civil Local Rule 9, the Court invokes General Local Rule 83(f) and deems that, under these circumstances, dismissal without prejudice is the appropriate sanction for Schuenke's non-compliance with the Rule. Therefore, Schuenke's action is dismissed without prejudice.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Smith is **SUBSTITUTED** as the Respondent.

Schuenke's action is **DISMISSED WITHOUT PREJUDICE** for failure to comply with Civil Local Rule 9; and

The Clerk of Court is **DIRECTED TO ENTER JUDGMENT** accordingly.

Dated at Milwaukee, Wisconsin, this 24th day of October, 2011.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge